

Application No. 10/706,454      80050 US01  
Amendment dated April 4, 2006  
Reply to Office action dated January 4, 2006

### **REMARKS**

Upon entry of this Amendment, claims 5-29 and 37-38 were pending in the application. Claims 1-4 and 30-36 have been withdrawn from consideration. Claims 5-29 and 37-38 stand rejected.

Claim 5 is canceled herein, and claim 15 rewritten in independent form to incorporate the subject matter of claim 5. This places claim 15 in independent form without narrowing the original scope of the claim. Claims 6-11, 16-18, 20, 29 and 37 are amended herein to depend from claim 15 and those depending on it. New claims 39-48 have been added to further highlight the composition of the present invention and are fully support by the original claims and the specification. No new matter has been added. Thus, claims 6-11, 15-29 and 37-48 are now pending in this application.

### **REJECTIONS UNDER 35 U.S.C. §§ 102 and 103**

The claims have been amended to further prosecution of this application. Claims 5-12, 16, 18-25, 29 and 37-38 were rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Grzybowski (U.S. Patent No. 5,711,796). Claims 5-14, 16, 18-29 and 37-38 were rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Gilmore (H1250) or Isobe (U.S. Patent No. 5,328,943). Claims 5-14, 16, 18-24, 27 and 37-38 were rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Uemura (U.S. Patent No. 4,091,134) or Hesp (U.S. Patent No. 5,280,064). Applicants respectfully traverse this rejection. However, because claim 5 has been canceled, and the subject matter incorporated into claim 15, Applicants respectfully submit that the rejection with respect to claim 15 and those that depend from it is overcome. Since each element of amended claims 6-29 and 37-38 and new claims 39-48 are not found in the above references as required in a 102 rejection, Applicants respectfully request that the rejection be withdrawn, and the claims allowed.

Claims 5-19 and 37-38 were rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Kosaka (U.S. Patent No. 3,896,069) or Uemura. Applicants respectfully traverse the rejection and request reconsideration.

MPEP sec. 2142 states that to establish a prima facie case of obviousness, three criteria must be met:

- 1) "there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings";
- 2) "there must be a reasonable expectation of success"; and
- 3) "the prior art reference (or references when combined) must teach or suggest all the claim limitations".

The present invention distinguishes over Kosaka (U.S. 3,896,069) and Uemura (U.S. 4,091,134) by setting out a modified asphalt composition produced by the process comprising: 1) contacting at least one plastomer and at least one elastomer to produce a pellet; and 2) adding said pellet to asphalt in a mixing zone to produce said modified asphalt composition, wherein said plastomer is an oxidized polyethylene. Kosaka and Uemura fail to disclose or suggest these features and the resulting benefits.

Applicants submit that Uemura discloses a composition to coat a metal pipe whose main component is a low molecular weight oxidized polymer of propylene-ethylene copolymer or polypropylene (see, for example, col. 2 lines 38-42). Applicants further submit that Kosaka discloses a composition where the oxidized low molecular weight polypropylene is a propylene-ethylene copolymer (see, for example, claim 6). Neither reference discloses or suggests the use of an oxidized polyethylene or an oxidized polyethylene homopolymer as required in the present invention. Thus, there is no suggestion or motivation in Kosaka or Uemura to arrive at the present invention.

As such, Applicants respectfully submit that the present invention is not made obvious by Kosaka or Uemura. Applicants respectfully further submit that claims 6-11, 16-29, and 37-48 that depend from amended claim 15 are likewise patentably distinguishable over the cited references. Therefore, Applicants respectfully urge that the asserted rejections over and are overcome. Based on the foregoing comments, the Applicants respectfully request that the rejection be withdrawn, and the claims allowed.


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Likewise, with regard to new claims 39-48, Applicants respectfully submit that the cited references fail to disclose or suggest the composition of the present invention. New claim 39 incorporates the features of claims 15 and 20 and sets forth a modified asphalt composition comprising: at least one plastomer, at least one elastomer, and asphalt, wherein said plastomer is oxidized polyethylene and wherein said elastomer is a block copolymer of at least one conjugated diene and at least one monoalkenyl aromatic hydrocarbon. The cited references fail to disclose or suggest these features. As such claims 39 and those claims that depend from it are not anticipated or made obvious by the cited references.

Applicants respectfully requests that a timely Notice of Allowance be issued in this case. Should the Examiner have any questions, please contact the undersigned at (423)-229-8862.

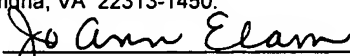
Eastman Chemical Company  
P.O. Box 511  
Kingsport, Tennessee 37662  
Phone: (423) 229-8862  
FAX: (423) 229-1239

Respectfully submitted,

  
Tammye L. Taylor  
Registration No. 52,507  
05/04/2006  
Date

CERTIFICATE OF MAILING UNDER 37 CFR 1.8(a)

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

  
Jo Ann Elam

5-4-06  
Date